

No. ~~568~~~~568-563~~

18 & 19

IN THE

Supreme Court of the United StatesOCTOBER TERM, 19~~38~~³⁹

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE
ROCHE, AS TRUSTEES OF THE UNITED MINE WORK-
ERS OF AMERICA WELFARE AND RETIREMENT FUND,
Petitioners,

v.

BENEDICT COAL CORPORATION

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT**

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*To the Honorable, the Chief Justice and Associate
Justices of the Supreme Court of the United
States:*

Your Petitioners, John L. Lewis, Henry G. Schmidt¹
and Josephine Roche, as Trustees of the United Mine
Workers of America Welfare and Retirement Fund,
pray that a writ of certiorari issue to review the judg-

¹ A motion, reciting the death of Charles A. Owen and the ap-
pointment of Henry G. Schmidt, as successor Trustee, and seeking
substitution of said Henry G. Schmidt as an appellant herein, was
sustained by the Sixth Circuit by order filed October 16, 1958.
Copy of such order appears at the end of Vol. II of the certified
Record filed with this Court.

ment of the United States Court of Appeals for the Sixth Circuit entered in this cause on September 26, 1958.

OPINIONS BELOW

Copy of the opinion of the District Court² on motion for summary judgment and orders entered with reference thereto and copy of judgment of the District Court and of that Court's order overruling petitioners' motion to amend that judgment are appended as Appendix I hereto (A. p. 1a).³ Included therein also is the Court of Appeals' judgment (Case No. 13,055) aforementioned (A. 8a).

The opinion of the Court of Appeals is reported in 259 F. 2d 346 (Adv. Op. November 17, 1958). A copy is appended as Appendix II (A. p. 9a).

JURISDICTION

Jurisdiction to review by writ of certiorari the judgment of said Court of Appeals entered September 26, 1958, is invoked under the provisions of 28 USCA Sec. 1254 (1).

On October 21, 1958, upon motion therefor by petitioners, said Court of Appeals stayed its mandate on said judgment upon condition that a petition for writ of certiorari be filed with this Court within 30 days thereafter. At a later date and within said 30-day period, said Court of Appeals entered an order further staying its mandate on said judgment for an additional period of 15 days.

²The District Court referred to in this Petition, unless otherwise indicated, is the United States District Court for the Eastern District of Tennessee.

³The abbreviation "A." refers to the Appendix to this Petition.

BASIS FOR FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The basis for Federal jurisdiction in the United States District Court of the original complaint was diversity of citizenship between the plaintiffs and the defendant and the amount involved.

The cross-claim was filed pursuant to Sections 301 and 303 of the Act (Title 29, U.S.C.A. Secs. 185 and 187).

QUESTION PRESENTED

In an action by the Trustees of an irrevocable trust created under a collective bargaining agreement entered into by bituminous coal operators and United Mine Workers of America^{3a} pursuant to Section 302(c)(5) of the Labor-Management Relations Act, 1947,⁴ for the benefit of the employees of all the employer-settlers of the trust, which action is brought against one individual employer-settlor seeking to recover moneys due the trust under trust provisions of collective bargaining agreements which expressly vested title to such moneys in the Trustees, may such one employer-settlor set off damages sustained by it alone against moneys title to which had passed to the Trustees, because of alleged conduct on the part of the said labor organization in violation of the Act and of the collective bargaining agreements.

The United States Court of Appeals for the Sixth Circuit concurred with the District Court in permitting such a set off, petitioners having contested that conclusion in both of said Courts.

^{3a} United Mine Workers of America will be referred to herein as "UMW".

⁴ Herein called the "Act".

STATUTES INVOLVED

Involved herein are Sections 301 and 302 of the Act (29 U.S.C.A., Sections 185 and 186), copy of the pertinent portions of which is appended as Appendix III (A. p. 29a).

STATEMENT OF THE CASE

The question here presented arises from an interpretation of certain provisions of said Act and the provisions of collective bargaining agreements entered into between bituminous coal operators and UMW pursuant to authorization granted by the Act's Section 302(c)(5).

This action was commenced by the Trustees of the United Mine Workers of America Welfare and Retirement Fund in the District Court against Benedict Coal Corporation, to recover trust property exceeding \$75,000 on coal mined by Benedict.

The plaintiffs had become such Trustees as a consequence of provisions of the National Bituminous Coal Wage Agreement of 1950 which provisions were carried forward in amendments to that Agreement in 1951 and again in 1952 (R. pp. 88a, 118a, 108a).⁵ Benedict, along with numerous other coal operators and associations responsible for the production of a great preponderance of the nation's bituminous coal, had executed said Agreements with UMW. In the 1950 Agreement, in addition to attempting to establish for the United States' bituminous coal industry a mine safety program, workmen's compensation

⁵ The National Bituminous Coal Wage Agreement of 1950 will herein be called the "1950 Agreement"; that Agreement as amended in 1951, the "1951 Agreement"; and the 1950 Agreement as amended in 1952, the "1952 Agreement". The abbreviation "R." used herein refers to the Certified Record filed in this Court.

and occupational disease benefits, wage and hour rules, vacation pay, etc., the parties also created the United Mine Workers of America Welfare and Retirement Fund (herein called "Fund") pursuant to the Act's Section 302(c). To the Trustees of the trust each signatory coal operator, including Benedict, therein agreed to pay a specified sum "on each ton of coal produced for use or for sale" and the Trustees designated in that instrument were required to administer the trust for those persons entitled to receive its benefits, namely, employees of the signatory operators, their families and dependents as set forth in the agreement. While in the agreements immediately antecedent to the 1950 Agreement, only title to moneys paid into a predecessor trust vested in the Trustees thereof, the 1950 Agreement specifically provided that "*Title to all the moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund*", as an irrevocable trust. (R. p. 96a). These provisions were expressly carried forward in the 1951 and 1952 Agreements. (R. 118a, 108a).

In its answer filed in this action, Benedict denied liability to the Trustees for the sum sought on several grounds, but none of those grounds is material to the question presented by this Petition for Certiorari. Simultaneously, however, with the filing of Benedict's answer denying liability and under the Act's Sections 301 and 303 (29 U.S.C.A. Sec. 185, 187), Benedict filed a cross-claim for damages against UMW and United Mine Workers of America, District 28 (herein called "District 28") [R. pp. 25a, 37a, 41a and 61a] alleged to have resulted from strike activity claimed by Benedict to be violative of the 1950, 1951 and 1952 Agreements and said Section 303.

At the trial, the District Court instructed the jury, inter alia, that if it found that there was a breach of the Agreements, either by UMW and or District 28, or that either of them violated any of the secondary boycott provisions of the Act, and that as a result Benedict sustained damages, the jury should set off such damages against any amount awarded the Trustees. (R. p. 733a).

The jury found that the Trustees were entitled under the collective bargaining agreements to recover from Benedict trust property amounting to \$76,504.21. The jury further found that Benedict was entitled to set-off against that total, the amount of \$81,017.68, the latter sum being the amount which the jury found that Benedict was entitled to recover in its cross-claim for damages against UMW and District 28. (R. p. 74a).

The District Court thereupon entered judgment against UMW and District 28 for \$81,017.68 in favor of Benedict and ordered execution for such amount to issue, said sum to be paid into the registry of the Court. In so far as the judgment rendered in favor of the Trustees is concerned, the judgment entered by the District Court reads as follows:

"It is further ordered that said sum of \$81,017.68 be paid into the registry of the Court to be disbursed by the clerk in accordance with instructions appearing below.

"It is further ordered that said Trustees, in accordance with the verdict rendered in their favor, have and recover of Benedict Coal Corporation the sum of \$76,504.26, said recovery to be had in the manner following: From the aforesaid \$81,017.68 ordered paid into the registry of the Court, that the sum of \$76,504.26 be paid to said Trustees. That the difference between

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"\$76,504.26 and \$81,017.58 be paid to Benedict Coal Corporation." (R. p. 76a).

Thereafter the Trustees unsuccessfully moved the District Court to have the judgment provide therein for interest thereon from the date of institution of suit and also for the issuance of execution against Benedict for the collection of the entire amount of the Trustees' judgment and to eliminate from the judgment the provision that the recovery awarded the Trustees be satisfied out of Benedict's judgment against UMW and District 28. (R. p. 82a). The District Court assigned two reasons for denying the motion:

(1) Its determination that the Trustees were third-party beneficiaries to the Agreements and as a result the sum certain owing to them as royalties was rendered uncertain by possibility of set off because of violation by UMW and District 28 of certain provisions of the Agreements, and

(2) Because of its determination that the Trustees were third-party beneficiaries to the Agreements, they have a right to unconditional judgment against Benedict for only such sum as any judgment rendered in their favor for royalties due exceeds damages adjudged against UMW and District 28 and inasmuch as under the verdict of the jury no such excess exists an unconditional judgment against Benedict will not be entered in favor of the Trustees. (R. p. 85a).

It was the position of the Trustees, both in the District Court and in the Court of Appeals, that under the several Agreements title to the trust res passed to the Trustees immediately upon coal production, so

that any claim which Benedict might have had against UMW and/or District 28 could not and may not be utilized as a set-off against the Trustees' right to recover such trust res, title to which had vested in the Trustees. The action of the Trustees therefore was one to recover trust property and was immune to set offs or claims which Benedict might have against UMW and/or District 28.

The Court of Appeals held that the obligation by Benedict to make payments to the Trustees was dependent upon performance by UMW and District 28 of their obligations to Benedict and consequently they were third-party beneficiaries of the Agreements and subject to the defenses arising from the conduct of UMW and District 28. (A. p. 21a). Reversing the judgment in Trustees' case and in the one against UMW and District 28 and remanding the latter solely for a determination of damages, the Court of Appeals opinion directed that the Trustees' judgment "will then be amended by the District Court to allow execution and interest on that part of the said judgment which is in excess of the set-off in favor of Benedict as so redetermined" (A. 8a, 22a-3a). The order (A. 8a) directs that the District Court judgment be set aside "for amendment" in accordance with the opinion.^{5a}

ARGUMENT—REASONS FOR GRANTING THE WRIT

I.

The Court of Appeals has decided an important federal question involving the administration of a trust created under the authority of the Act's Section

^{5a} The Court of Appeals' judgment in Trustees' case (No. 13,055) appears in the Appendix, hereto, p. 8a. On the same page appears that Court's judgment against UMW and District 28 (Case No. 13,056).

302 and contained in collective bargaining agreements, national in scope, in such a way that the District Court and the Court of Appeals have departed from accepted principles governing the administration of trusts with a result that the intent of Congress, with reference to the administration of trusts created pursuant to the Act, is thwarted. The thrust of the courts' reasoning and judgments is to jeopardize the stability of all trusts resultant from collective bargaining, and consequentially to be deprivative of welfare and pension benefits relied upon by employee beneficiaries of such trusts. The large number of persons covered by welfare and pension programs emphasizes the significance of the impact of the courts' decision in the instant case." Further, and pertinently, the Sixth Circuit has cited no decisional law to support its conclusion. Thus, there is presented an important federal question which has not been, but should be, settled by this Court.

The Trustees sue as Trustees seeking to recover trust property, title to which had vested in them, and not as third-party beneficiaries to a contract.

The fundamental error in the holding of the Trial Court, we submit, is that the Court considered the Trustees in this action as third-party beneficiaries to the Agreements. It was upon the basis that the Trustees were such beneficiaries that the Trial Court found

"In the "Final Report Submitted to the Committee on Labor and Public Welfare by Its Subcommittee on Welfare and Pension Funds, Pursuant to Senate Resolution 40, as extended by Senate Resolution 200 and 232", which report deals with "Welfare and Pension Plans Investigation", it is said: "Over 75 million persons, employees and dependents, or about one-half of the population of the Nation, are covered in some measure by employee welfare and pension programs. This tremendous development has come about principally in the past 10 years" (Page 5).

that the Trustees' claim was subject to a set-off by virtue of the alleged breach of contracts and violation of the Act, on the part of UMW and District 28. The Court of Appeals reached the same conclusion.

The Trustees contend with respect to the unpaid royalties—the obligation upon which they seek judgment—that such unpaid royalties, by virtue of the language of the several Agreements and the conduct of the parties thereunder, are trust property in the hands of the employer-settlor, Benedict, and that such trust property in the hands of Benedict became impressed with such trust upon the production of coal from which the obligation is computed.

The material language in the trust instrument contained in the Agreement provides (R. 96a):

“Title to all the moneys paid into *and or due and owing* said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust . . .”⁷

If meaning is to be given to the above quoted language, it must result in a determination that Benedict's unpaid obligation, title to which is vested exclusively in the Trustees, is property impressed with a trust in Benedict's hands as an employer-settlor.

That such was the intention of the contracting parties becomes even more clear when the language of the contract which preceded the 1950 Agreement is considered. The National Bituminous Coal Wage Agreement of 1947 (Exhibit 15, R. 126a; R. 755a) provides that:

⁷ All emphases of provisions in the Agreements are supplied.

“*Title to all the moneys paid into said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust . . .*” (Emphasis supplied)

Under this earlier Agreement title vested in the Trustees only as to “*moneys paid into said Fund*”. The difference in this language and the comparable provisions of the 1950 Agreement and as carried forward in the 1951 and 1952 Agreements—“*moneys paid into and or due and owing*”—shows, we submit, an unmistakable intent of the parties to create a trust at the time a particular obligation became computable.

In *Lewis v. Quality Coal Corporation*, (CA-7), 243 F.2d 769, the Seventh Circuit held that the moneys which were due but unpaid by Quality Coal Corporation to the Trustees of the United Mine Workers of America Welfare and Retirement Fund, were held by that corporation upon a trust. Hence the trust res due and owing by Benedict is likewise held by that company upon a trust accordant with Benedict's trust covenant as an employer-settlor. A teaching of the *Quality Coal Corporation* case is that UMW “is in no way interested” in the trust property “except to see that the trustees perform their trust duties” (243 F. 2d 773). Therein (p. 773) it was further declared that

“No person is legally interested in this controversy except plaintiffs, who, as trustees, claim the right to recover, and defendant who has agreed to pay the royalties demanded.”

The authorities are positive in holding that a trust is created in such a situation.

The proposition is stated in 89 C.J.S., Trusts, sec. 24, p. 741, in the following language:

"It has been held . . . that a declaration of trust of property executed before the acquisition of the property, but which is subsequently acquired, does not fail for want of the requisite subject matter, *but that the instrument takes full effect when the subsequent title vests in the declarant.*" (Emphasis supplied)

In comment "k" under section 26, p. 85, of the *Restatement of the Law of Trusts*, it is said:

"k. . . . Thus, if a person executes a declaration of trust of certain property not at the time owned by him and he thereafter purchases property of that description, the act of acquiring the property coupled with the earlier declaration of trust may be a sufficient manifestation of an intention to create a trust at the time of the acquisition of the property."

That a trust may arise automatically upon acquisition of the res is stated in *Grubb v. General Contract Purchase Corporation* (CA-2, 1938), 94 F. 2d 70, 73, as follows:

" . . . it is also true that a declaration of trust may precede acquisition of the res, and attach to it thereafter."

Other authorities setting forth the principle here discussed are:

Merritt Oil Corporation v. Young, (CA-10, 1930) 43 F. 2d 27, 29-30

Brainard v. Commissioner of Internal Revenue, (CA-7, 1937) 91 F. 2d 880, 882-883

Universal Ins. Co. v. Steinbach, (CA-9, 1948), 170 F. 2d 303, 305

The Court of Appeals' conclusions that Benedict's "obligation to the Trustees was dependent upon performance by the Unions of their obligations" and therefore the Trustees were third party beneficiaries, "subject to the defenses arising from breaches by the Unions" (A. 20a) are emasculatory of the trust agreed to by the Agreements' employer-settlors, including Benedict. A vice of the Court of Appeals' reasoning is readily discernible when, despite the trust provisions' clear and positive language that "moneys . . . due and owing . . . shall be vested" in the Trustees, the Court of Appeals rejected Trustees' position because that would mean that the trust property became "due and owing" as soon as the coal left the ground" (A. 20a). The express covenant in the 1950 Agreement that employer-settlors make payments on the 10th day (later changed to the 18th) of each calendar month covering production of all coal for use or sale during the preceding month (R. 97a, 114a) challenges the judgments of the District Court and the Court of Appeals, the effect of which is to postpone delivery of the trust res until UMW and District 28 pay the judgment and, indeed, conditions such delivery upon their paying the judgment against them. Not only is there no warrant for this result to be found in the Agreements, but, to the contrary as already observed, delivery of the trust res on a specified date—and without any condition attached—is specifically provided. The offending courts have not only reformed the parties' agreement, but have violated the rule that "Express stipulations cannot, in general, be set aside or varied by implied promises". 12 Am. Jur., Contracts, Sec. 239, p. 768; *Ferrolinc Corp. v. General Aniline & Film Corp.*, (CA-7), 207 F.2d 912, 926. The Court of Appeals' insistence that Benedict's

obligation was dependent upon performance totally disregards the fact that it was actual performance under the Agreements—namely, the production of coal by Benedict's employees—which created the trust property, title to which vested in the Trustees and which Benedict wrongfully withheld from the Trustees. In denying to the Trustees their unconditional right to such trust property by refusing them the process of execution, both the District Court and the Court of Appeals have thus given aid to an employer-settlor admittedly guilty of breaching his covenant to pay in accordance with the Agreements. Further, it must be remembered that herein trust property which Benedict agreed to deliver in 1950 is now withheld because of alleged strike activity occurring even as late as 1953.

It is not amiss at this juncture to point out that the trust property sought by Trustees in this action is, as the trust provisions expressly recite, an "irrevocable trust" (R. 96a) for delineated "benefits to employees of said Operators, their families and dependents" (R. 95a) and not limited to Benedict's employees alone. Indeed the Court of Appeals recognized that Benedict's employees had only a "potential" and not a "present interest" in the trust res" (A. 21a). Yet, to deprive Trustees of an unconditional judgment for recovery of the trust res, especially when Benedict's obligation to deliver to the Trustees the trust property is a transaction wholly separate from situations upon which Benedict's claims against UMW and District 28 are predicated, effectuates a penalty upon employees of all other employer-settlors as "potential" beneficiaries by making recovery of the trust res conditional upon a tort-feasor's ability to pay a judgment against it.

Moreover, if the set-off is permitted as authorized by the District Court and Court of Appeals, the money against which the set-off is allowed in favor of the employer being trust res, the result thus established has the effect of revoking the trust which was impressed upon the moneys owing by the employer to the Trustees.

Under the long recognized principles of trust law, the settlor has power to revoke a trust only to the extent that by the terms of the trust he has reserved such power. In the instant case, Benedict reserved no such power and the trust was unconditional (except as to coal production) and declared irrevocable.

In the *Restatement of the Law of Trusts*, Sec. 330, at page 984, the following statement is made:

"The settlor has power to revoke the trust if and to the extent that by the terms of the trust he reserved such a power."

The foregoing rule is, we submit, supported by an unbroken line of authorities.

In *Boycott on Trusts*, Vol. 4, Part 2, Sec. 993, p. 429, the following statement is made:

"If a trust has been created, it results in the vesting of property rights in the cestuis with regard to the trust subject-matter. If these property rights were absolute and unconditional, they cannot be taken from their owners without action on the part of such owners by way of surrender or conveyance. The creator of those property rights, whether for a consideration or voluntarily, cannot resume his former position as owner merely because of a change of mind or a feeling that he

has unwisely given or conveyed for a consideration."

The Court in the case of *Fricke v. Weber* (CA-6, 1944), 145 F. (2d) 737, in considering the right of a settlor to revoke a trust, said (page 739):

"As no reservation was made of a right to alter or revoke the trust, under both common law and the Ohio decisions it was irrevocable without the consent of the beneficiary."

In *Scott on Trusts*, 2d Ed., Vol. III, Sec. 330.1, p. 2394, the following statement is made:

"Where the creation of a trust is evidenced by a written instrument which purports to include the terms of the trust, and there is no provision in the instrument expressly or impliedly reserving to the settlor power to revoke the trust, the trust is irrevocable."

We submit that the conclusion of the Court of Appeals in this action is at variance with established principles governing the administration of trusts, is likewise at variance with the intent of the parties entering into the subject collective bargaining agreements, and brings about a result which thwarts the Congressional purpose with reference to the establishment of trusts pursuant to the Act; and it is erroneous.

II.

The Act's Section 301(b) mandates that money judgments against a labor organization in a federal district court "shall be enforceable only against the organization as an entity and *against its assets*". (Emphasis supplied). Where, as in the instant case, the recovery of trust property by Trustees of a trust is

conditioned upon, and postponed until, UMW's and District 28's payment of the money judgment entered against them, an employer-settlor is permitted to withhold from the Trustees the trust property, title to which has vested in them. If, under Section 301(b), judgment debtors are unable to discharge the money judgment, the effect of such conditional judgment to trust property results in payment of the money judgment against the labor organization, not out of its assets as Section 301(b) makes mandatory, but by withholding the trust property the judgment creditor derives satisfaction of his money judgment from the trust property, title to which was not in the labor organization but in the trustees of the trust. The pattern utilized by the District Court, with the Court of Appeals' approbation, could thus serve as precedent to endanger the very existence of employee trusts created in collective bargaining agreements, congressionally-permitted and juridicially recognized as a social device to be encouraged, through the medium of a federal court judgment in conflict with the command of Section 301(b). The potential inconsonancy of such pattern and device with Congress' directive in Section 301(b) merits review of the instant case by this Court.

Under the pattern of the District Court's judgment, approved by the Court of Appeals, the denial of the right to have execution issued to Trustees on their judgment has the legal effect of rendering that judgment legally impotent, for although the judgment itself recognizes that Trustees are entitled to trust property improperly withheld from them, rejection of the execution process results in denying to them the very trust property which the judgment connotes belongs to them. Instead of requiring Benedict to implement the finding that

the Trustees were entitled to the trust property, the judgment makes the Trustees' right of recovery dependent upon UMW's and District 28's response to the money judgment against them, a pattern utterly at variance with Benedict's promise in the Agreements to deliver the trust res to Trustees each month following production of coal.

If the pattern of conditional judgment, of which complaint is herein made, is permitted to stand, then its potential conflict with the Act's Section 301(b) is apparent.

Section 301(b) provides in part:

"... Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

Despite judicial support for the proposition that the trust fund is an entity separate and distinct from UMW (*Quality Coal Corp., supra; United Marine Division v. Essex Transportation Co., (CA-3), 216 F. 2d 410; International Ladies' Garment Workers, AFL v. Jay Ann Co., Inc., (CA-5), 228 F. 2d 632*), the Court of Appeals held that "defenses available against the Unions were also available to Benedict as set-offs against the Trustees." (See Appendix II here-to p. 20a). These "defenses" constituted certain alleged breaches of the collective bargaining agreement and violations of the secondary boycott provisions of the Act. Such defenses as construed by the District

Court and the Court of Appeals are not defenses in the sense that they would defeat or destroy the Trustees' claim, but are defenses, if valid, measurable in dollars and available by way of set-off against the Trustees' right to the recovery of trust property, title to which Benedict had, in the Agreements, agreed was vested in the Trustees. The defenses as thus held applicable by the lower courts have the legal effect of neutralizing the Trustees' right to such trust property against the employer-settlor and the claim of the employer against UMW and District 28 at the same time.

It may be contended that the Trustees' right is not neutralized in the present case by virtue of the manner in which the District Court gave effect to the verdict of the jury. The District Court's judgment required UMW and District 28 to satisfy the judgment rendered against them by making payment of the amount thereof into the registry of the Court and that out of the moneys so paid the amount found to be due and owing the Trustees be paid, thus satisfying the Trustees' conditional judgment. The balance of the money paid into Court was directed to be paid to the employer. (See Appendix I hereto, p. 6a).

The Court wholly overlooked the wording of the Act which expressly provides that "any money judgment against a labor organization in a District Court of the United States shall be enforceable only against the organization as an entity *and against its assets.*" Moneys owing to the Trustees by the employer as royalties on coal mined constitute trust property, title to which has vested in the Trustees and are not assets of the union judgment debtors, but are, in fact, assets of the trust. Therefore, permitting the employer to be made whole for his damages out of such

trust property of the Trustees is in direct contravention of the Act. On the other hand, if the union judgment debtor be financially unable to pay into Court the judgment rendered against it, and the amount of such judgment is equal to or greater than the amount the damaged employer owes to the Trustees in royalties, the union judgment debtor will have paid the damages awarded against it, not out of its assets as required by the Act, but in an entirely different manner and from funds in which, as the Court said in the *Quality Coal Corp.* case, it "is in no way interested" (243 F. 2d 773).

Furthermore, if this so-called right of set-off is held to exist under the circumstances here involved, the very purpose of Section 301(b) of the Act may be defeated. In discussing trust funds under the Act, on the floor of the Senate, its sponsor, Senator Taft, stated:

"The purpose of the provision is that if the welfare fund shall be a perfectly definite fund, that its purposes shall be stated so that each employee can know what he is entitled to, can go to court and enforce his rights in the fund, and that it shall not be, therefore, in the sole discretion of the union or the union leaders and usable for any purpose which they may think is to the advantage of the union or the employee The tendency is to demand a welfare fund as much in the power of the union as possible. Certainly unless we impose some restrictions we shall find that the welfare fund will become merely a war chest for the particular union" 93 Cong. Rec. 4746-7 (1947). [Emphasis Supplied]

If the so-called claim of set-off or right of set-off as decreed by the District Court and the Court of Ap-

peals in this case exists, then the "perfectly definite fund" referred to by Senator Taft cannot exist because the amount of the trust is not dependent upon production alone but is inextricably tied to possible torts committed by labor organizations in matters apart from the actual performance from which the trust res ensues.

It is generally recognized that trusts of the type we are now considering represent a social device which deserves to be encouraged and protected. *Upholsterers' Inter. Union v. Leathercraft Furn. Co.*, D.C. E.D., Pa., 1949, 82 F. Supp. 570, 575. This was the spirit under which this Act was written.

We submit that the construction placed upon this Act and upon the collective bargaining agreements here involved by the District Court and the Circuit Court of Appeals brings about a result which is wholly at variance with the Congressional intent in its enactment and is erroneous.

CONCLUSION

We submit that the question presented in this petition should be approached with the thought in mind that these trusts represent a social device to be encouraged. The Congress in the enactment of the Labor-Management Relations Act, 1947 has thrown about such trusts, when created pursuant to that Act, a protection that should not be whittled away by Court decisions. The result of the decision of which review is herein sought vitally affects the sanctity of such trusts.

For the reasons stated, it is respectfully submitted that this ~~petition~~ writ of certiorari should be granted.

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